Negative: PATTERN

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: The AFF plan reforms the “PATTERN” system it (Prisoner Assessment Tool Targeting Estimated Risk and Needs). It’s a computer program that evaluates recidivism risk among prisoners to determine which are eligible for “Earned Time Credits”. AFF argues that some prisoners are being treated too harshly because the scores the computer gives are falsely judging them to be higher recidivism risks than they really are. Plan adjusts the scores to allow more prisoners to be considered “low risk”. The threshold of what’s considered “low” or “medium” or “high” risk are completely arbitrary, there’s no right or wrong answer. And PATTERN was reformed recently, with a lot of improvements and changes. AFF’s own evidence says we should wait and study how released prisoners perform in order to know whether the score thresholds should be adjusted (to see if we’re accurately predicting what released prisoners do – whether, indeed, the ones we judge as “low” risk in fact do not often return to crime after release).

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Negative: PATTERN

OPENING QUOTES / NEG PHILOSOPHY

Good behavior is better than Affirmative fiat

This debate will be about what’s the best way to reduce the government’s assessment of how dangerous a prisoner is. The Affirmative says it’s by fiating that the risk numbers are lowered for all prisoners. The Negative position is that the best way is the Status Quo way: Have each prisoner demonstrate by their good behavior and completion of rehab programs that they are reformed and their risk of recidivism is lower.

The case for a Negative ballot in one argument: Everything to lose and nothing to gain

**If you vote Affirmative to make PATTERN more lenient, you’ll let more prisoners out early, but you’ll risk releasing some who are dangerous and will harm society. If you vote Negative, some prisoners will have to serve out the entire prison term to which they were sentenced, but you’ll guarantee that we won’t release any additional dangerous criminals who would harm society. A Negative ballot prioritizes public safety at the cost of criminals serving out their legal prison terms. An Affirmative ballot prioritizes prisoner comfort at the cost of risk to public safety. This exact dilemma is pointed out by Charles Stimson in 2020, where he was commenting specifically on possible reforms of the PATTERN system when he wrote QUOTE:**

Charles D. Stimson 2020. (Senior Legal Fellow and Manager in the National Security Law Program in the Edwin Meese III Center for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation) 8 June 2020 “The First Step Act’s Risk and Needs Assessment Program: A Work in Progress” <https://www.heritage.org/sites/default/files/2020-06/LM265_0.pdf> (accessed 1 Apr 2022)

It is easy to reduce a prison population if public safety is not taken into consideration. Simply open the cell doors and inmates will gladly walk out. It is much more difficult, however, to reduce the prison population while also “creating mechanisms to maintain public safety.” How do you identify the right inmates to let go, and what criteria should you use to do so? What tools do you use to assist in the process, and how can you be sure these tools have accurate predictive qualities, so that when they are applied to a particular convict, they can, with some degree of accuracy, assist in evaluating whether that person is a good candidate for early release? If the tools are not accurate and are too lenient, the consequences can be deadly, as we demonstrate later in this paper. If the tools are too stringent, then few convicts are released under the revised rules, resulting in good candidates for early release languishing in prison instead of getting on with their lives as law-abiding citizens outside of confinement.

Correcting a false Affirmative assumption: Expecting prisoners to complete their sentences is not a bad thing

The Affirmative enters this debate with a false assumption: That prisoners “deserve” to serve less than the time they were sentenced to, and that therefore society “owes” them a system that guarantees they can be let out early. They never offered you any justification for this assumption that is fundamental to their case. IF that assumption is unproven or false, then the entire AFF case crumbles. And until they prove it, they don’t have a case.

INHERENCY

1. PATTERN is highly accurate in Status Quo

Affirmative source admits: PATTERN’s original statistical model is “good,” performs better than other models, and is not racially biased

AFFIRMATIVE SOURCE Julie Samuels and Emily Tiry 2021. (Samuels - senior fellow in the Justice Policy Center at the Urban Institute. Tiry - senior research associate in the Justice Policy Center) published by the Urban Institute, July “Implementation of the First Step Act” July 2021 <https://www.urban.org/sites/default/files/publication/104507/implementation-of-the-first-step-act-the-risk-and-needs-assessment-system_0.pdf> (accessed 1 Apr 2022) (brackets added)

The NIJ [National Institute of Justice] uses the area under the curve (AUC) statistic as its main measure of PATTERN’s predictive performance. The AUC value represents the probability that a randomly selected person who reoffends receives a higher PATTERN score than a randomly selected person who does not reoffend. The original PATTERN tool performs well compared with other commonly used risk assessment tools, with an AUC of 0.80 for the men’s general tool and 0.78 for the men’s violent tool. The AUC for the women’s general tool was 0.79 and for the women’s violent tool was 0.77 (OAG 2019). A good AUC in the criminal justice context is generally considered to be anything above 0.70. Another key consideration for tool performance was whether the tool was biased across racial and ethnic groups. Again, the NIJ used AUC as the key metric and found little variation (OAG 2019).

Dept of Justice (DOJ) study compared PATTERN to multiple other systems and found it more accurate than all of them

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The DOJ then measured the predictive validity of PATTERN compared to BRAVO-R and the most prominent risk and needs assessment tools in use, and found that PATTERN was 15 percent more predictive regarding someone’s risk of recidivating than other tools on the market. Those commercial tools include the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), the Level of Service Inventory-Revised (LSI-R), Static Risk and Offender Needs Guide for Recidivism (STRONG-R), and the Wisconsin Risk-Need (WRN), among others.

PATTERN is more accurate than any other predictive tool

US Dept. of Justice 2019. The First Step Act of 2018: Risk and Needs Assessment System 19 July 2019 <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf> (accessed 1 Apr 2022)

Operating under an extremely short timeline, the development of PATTERN is a significant advancement in the U.S. Department of Justice’s (the Department’s) implementation of the FSA for the following reasons: • The PATTERN assessment tool achieves a high level of predictive performance and surpasses what is commonly found for risk assessment tools for correctional populations in the United States;

2. Improvements already underway

Affirmative source admits: PATTERN improvements are already underway

AFFIRMATIVE SOURCE Julie Samuels and Emily Tiry 2021. (Samuels - senior fellow in the Justice Policy Center at the Urban Institute. Tiry - senior research associate in the Justice Policy Center) published by the Urban Institute, July “Implementation of the First Step Act” July 2021 <https://www.urban.org/sites/default/files/publication/104507/implementation-of-the-first-step-act-the-risk-and-needs-assessment-system_0.pdf> (accessed 1 Apr 2022) (brackets in original)

To date, the BOP has developed, released, and amended a risk assessment tool (Prisoner Assessment Tool Targeting Estimated Risks and Needs [PATTERN]), assessed the population, published a list of approved EBRR programs and PAs, and is moving forward with an upgraded needs assessment system; the DOJ has released a draft rule regarding certain aspects of its earned time system; and the BOP, the DOJ, and the IRC have released required reports regarding various aspects of FSA implementation.

PATTERN is the best it can be right now, but it will improve over time as more study is done

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In reality, there is no way of knowing how precise PATTERN will be in accurately predicting which inmates are appropriate candidates for early release, and which will recidivate. In time, as PATTERN is refined, programs are made available to all eligible federal inmates, the risk and needs of each inmate is re-evaluated, and inmates are released early, there will be studies on the accuracy of PATTERN itself, and it will, no doubt, be compared to the results from other widely used instruments. But at this point it is clear that the 17 factors included in PATTERN are typical for the most widely respected and used risk-assessment tools across the country and relied upon by experts in the field.

Affirmative Source admits: PATTERN risk factors are already being improved

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After PATTERN was released, the NIJ sought public comments and feedback on the tool, and it incorporated them into a revised version of PATTERN that was released in January 2020. Changes to the tool fell into three categories: changes to the risk factors (e.g., adding or removing risk factors or changing how they were measured), changes to how the factors were weighted, and changes to the risk category cut points. The specifics of those changes are as follows:   
◼ Changes to risk factors   
» Dynamic risk factors were added and others were adjusted. The new tool added measures for the amount of time since the last infraction (any and serious/violent), added scores for noncompliance with financial responsibility and education to the men’s tool, included additional programs to count toward the program completion measure, and combined technical and vocational courses with participation in federal industry employment (UNICOR) into a single work programming measure.

HARMS / SIGNIFICANCE

1. 99% of offenders can already benefit

PATTERN allows 99% of offenders to qualify for earned time credits under existing scoring model

**[This happens because the risk scoring categories are not permanent. Even if a prisoner is scored as “high” risk the day he goes to prison, and thus not eligible, he can participate in programs to reduce his score and qualify later on for time credits. (if they exist)]**

US Dept. of Justice 2019. The First Step Act of 2018: Risk and Needs Assessment System 19 July 2019 <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf> (accessed 1 Apr 2022)

Next, cut points were established for PATTERN based on the analytic placement method previously described. Test set findings are presented in Table 4. As indicated, cut points were developed for the general and violent models and for females and males separately. The presented findings below show the model cut points, percentage of the population, and recidivism rates for each RLC. Importantly, given the scoring for all four assessment models (see Table 2) and the cut point system developed to assign risk levels (see Table 4), 99 percent of offenders have the ability to become eligible for early release through the accumulation of earned time credits even though they may not be eligible immediately upon admission to prison. That is, as offenders participate in evidence-based programming, carry out work assignments, and complete courses, nearly all have the ability to reduce their risk score to the low risk category.

PATTERN works well because it allows prisoners to reduce their risk score over time with good behavior

US Dept. of Justice 2019. The First Step Act of 2018: Risk and Needs Assessment System 19 July 2019 <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf> (accessed 1 Apr 2022)

The Risk and Needs Assessment System is strong. Utilizing available data metrics, the expert team created an optimal risk instrument, PATTERN, that outlines a single assessment which incorporates a design that encourages risk reduction behavior (i.e., lack of infractions and increases in program participation) over time.

Prisoners get their risk score reduced as they demonstrate better behavior – and get re-assessed at least once/year

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Prisoners who successfully participate in recidivism-reduction programming or productive activities must be reassessed not less than annually, and high- and medium-risk prisoners with less than five years remaining until their projected release date are required to have more frequent reassessments. If the reassessment shows that a prisoner’s risk of recidivism or specific needs have changed, the BOP must reassign that prisoner to recidivism-reduction programs or productive activities consistent with those changes.

2. Nothing wrong with status quo risk scoring

Status Quo risk assessment levels are optimal: They were carefully measured to protect public safety

US Dept. of Justice 2019. The First Step Act of 2018: Risk and Needs Assessment System 19 July 2019 <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf> (accessed 1 Apr 2022)

Those individuals not identified as minimum, low, or high risk were classified as medium risk. This specific set of cut points was one of nearly a dozen examined and tested. The current cut points endeavor to set the appropriate balance between maximizing the number of inmates eligible to earn early release time credits and to participate in evidence-based programming that would reduce their recidivism risk to a low or minimum category, while also considering public safety and the risk of recidivism upon release.

3. No racial bias

DOJ study found no racial bias, but just to calm any worries, they eliminated factors that were questioned

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To test whether PATTERN, as constructed, was a race-neutral tool and to ensure it was predictive across all races and genders, the DOJ subjected PATTERN to an Area Under the Curve (AUC) analysis. The DOJ concluded that “PATTERN is a neutral assessment tool, as evidenced by the nearly equal scores on the Area Under the Curve Analysis,” reproduced in the chart below. Despite the fact that the AUC analysis demonstrated that PATTERN is a race-neutral tool, the DOJ, sensitive to the claims of stakeholders, removed two factors from PATTERN, as they “might be associated with bias, especially racial bias.” The two factors removed were: (1) age of first arrest/conviction, and (2) voluntary surrender. Those changes, according to the DOJ, reduced PATTERN’s predictive accuracy by “approximately one percent.”

SOLVENCY

1. More study needed

Affirmative’s source says we don’t know yet whether the plan should be done, and recommends more study

AFFIRMATIVE SOURCE Julie Samuels and Emily Tiry 2021. (Samuels - senior fellow in the Justice Policy Center at the Urban Institute. Tiry - senior research associate in the Justice Policy Center) published by the Urban Institute, July “Implementation of the First Step Act” July 2021 <https://www.urban.org/sites/default/files/publication/104507/implementation-of-the-first-step-act-the-risk-and-needs-assessment-system_0.pdf> (accessed 1 Apr 2022)

Recommendations   
The current criteria for eligibility for early release stand at roughly 30 percent probability of general recidivism and roughly 10 percent probability of violent recidivism (DOJ 2020). The administration should reassess these thresholds and whether they could be adjusted to make them less restrictive. As people begin to be released under the ETC program, the Biden administration should monitor recidivism rates and assess them against the criteria for each category to ensure the tool is well calibrated.

Reverse Advocacy: We should NOT change PATTERN just because we want to let more people out of prison, but we should wait until more studies are done

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As PATTERN matures, and more data becomes available, we will be able to ascertain how accurate PATTERN is in predicting recidivism and whether, in its application, it proves to be both race and gender neutral and an effective tool. The DOJ should continue to be prudent in studying the data as it accrues and considering a wide variety of feedback on PATTERN, and should base future decisions based on fact and the best science available, not political considerations or outcome-based desires.

“Years, if not a decade or more” study required to determine what changes are needed

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PATTERN was developed in a compressed time frame and informed in large part by the DOJ’s already existing and well-performing assessment system, the Bureau of Prisons (BOP) program called Bureau Risk and Verification Observation—Recidivism (BRAVO-R), which is used to assess the risk of prisoners being re-arrested or returned to the BOP within three years of being released from prison. PATTERN, like any RNAS [Risk & Needs Assessment], is a work in progress. The DOJ has vowed to, and is required to, continue refining PATTERN. It will take years, if not a decade or more, to evaluate whether it is effective.

AFF source admits: More reforms are underway and will be done as soon as further study is completed

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Since PATTERN was first released, it has undergone several changes. The NIJ [National Institute of Justice] plans to release another revised version of the tool in mid-2021, and the tool will be reviewed and revalidated on an annual basis. Given these expected ongoing changes, there are several issues that could be monitored to ensure the tool is accurate, fair, and does not create unnecessary barriers to moving people out of secure custody.

AFF source says, and BOP agrees: As of now, the data needed to improve the program simply doesn’t exist. Not only do they not have the data, they don’t have the right systems in place to collect the data

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The IRC [Independent Review Committee], in its December 2020 report, expressed concerns with the BOP’s approach to needs assessment, noting the reliance on the presentence report and self-reported information, the inaccessibility of information to frontline BOP personnel, and the limited means of determining the extent of any identified need (FSA IRC 2020). The BOP acknowledged the need to improve data collection and data systems associated with its needs assessment process (BOP 2020). Recommendation  
The Biden administration should review the BOP’s current needs assessment process, consider the IRC’s concerns, and expressly describe any plans for addressing those concerns.

2. “Earned Time Credits” (ETC) don’t actually exist

Affirmative Source admits: No one is getting Earned Time Credits, so the plan has no impact

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Earned time credits are not yet operational. No one has been granted early release based on the ETCs; the extent of credits assigned to date is unclear.   
» The DOJ proposed a rule on earning, awarding, losing, and restoring the credits, but did not spell out the BOP’s internal procedures for determining whether the credits will be applied to prerelease custody, supervised early transfer to supervised release, or both.   
» The BOP has drafted additional policies to implement the ETCs, some of which are now being negotiated with the BOP’s union (OAG 2020b).

3. No “right” answer

AFF source admits: The risk level cut-off scores are arbitrary. No one knows what the “right” numbers are

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The cut points that separate the risk categories are derived from the baseline recidivism rates for people released from BOP custody, and the risk category someone falls into depends on their risk score and the associated predicted risk of recidivating (see table 3). For example, the threshold for “low risk” for general recidivism (24 percent) was set at approximately half the baseline recidivism rate (47 percent), and the “low risk” threshold for violent recidivism was set at 12 percent, approximately twothirds the baseline violent recidivism rate (15 percent) (OAG 2019). It is important to note that the way these cut points are determined is a policy choice—there is no standard definition of what probability of recidivism counts as “low” or “high.”

DISADVANTAGES

1. More crime

Link: Status Quo recidivism rates under PATTERN are low – we’re doing great right now

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In its December 2020 report on FSA implementation, the DOJ reported recidivism rates for people released under the First Step Act. Though the rates are preliminary, reflecting an average follow-up time of 10.5 months (compared with the three-year period used for official recidivism rates), they are lower than might be expected. Overall, only 11 percent of people released under the First Step Act have recidivated. Extrapolated out to the full follow-up period, we might expect a general recidivism rate of roughly 38 percent. For comparison, the general recidivism rate for the population that PATTERN was developed on was 47 percent.

Link: AFF increases risk

AFF plan moves more prisoners into a status where they could be released earlier from prison. But that’s bad because of the…

Impact: Less time = more crime. Longer sentences are key to lower crime rates

Prof. BARRY LATZER 2020. (emeritus professor at John Jay College of Criminal Justice, New York) 17 Feb 2020 “Democrats Prefer ‘Reforming’ the Criminal-Justice System to Punishing Criminals” (accessed 1 July 2021) https://www.nationalreview.com/2020/02/democrats-prefer-reforming-criminal-justice-system-to-punishing-criminals/

The United States is still in a crime trough, with violent crime rates [down 51 percent since 1991](https://ucrdatatool.gov/Search/Crime/Crime.cfm). When crime is low, pressures mount to reduce especially punitive measures, such as long prison sentences or the death penalty. Meanwhile, progressives are also motivated by the belief that the criminal-justice system is biased against African Americans, as a disproportionate number of them are in prisons and jails. Though blacks are roughly 13 percent of the United States population, they are [31 percent](https://www.bjs.gov/content/pub/pdf/p17.pdf) (see table 3 of the BJS report) of state prison inmates. (No one has convincingly demonstrated that this gap is the result of anything other than [a disparity in](https://ucrdatatool.gov/Search/Crime/Crime.cfm) crime rates, so the racism allegation is unsupported.) The truth is that we are already in a period of retrenchment in criminal justice, a cutting back on arrests, prosecutions and incarceration. Imprisonment rates have fallen steadily since 2007, dropping by 15 percent. For African Americans the decline was 31 percent. The Democratic candidates for president have latched on to the cutback trend, some a lot more aggressively than others, whereas President Trump, to the extent that he takes a stance at all, has chosen a more traditional road, aiming at crime control rather than system reform. The risk in the Democrats’ leniency approach is that it may fuel another crime wave, a long-term crime boom, such as the terrible ordeal the country endured from the late 1960s to the early 1990s. The weakening of the system (fewer arrests and imprisonments, shorter sentences) was a major factor in the late 60s rise in crime. On the other hand, however, past crime booms have had multiple causes in addition to a weak criminal-justice system, such as a rise in the young male population. So far at least, these other crime correlates are not currently present.